

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3610 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

UNION OF INDIA

Versus

M. D. C. NAIR

Appearance:

MR BHARAT NAIK for Petitioners
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE A.L.DAVE

Date of decision: 24/03/99

ORAL JUDGEMENT

1. Union of India has preferred this application against the order passed by the Central Administrative Tribunal, Ahmedabad Bench, in O.A. No.112 of 1996, on 4.9.1997.

2. Earlier Tribunal was moved by the respondent by

preferring O.A. No.128 of 1992 and the same was decided on 11.5.1994 wherein the Tribunal held that the application is required to be partly allowed. The Tribunal further held that the benefit of giving pay scales to the applicants (i.e. respondent herein and others) with effect from 1.8.1976 was not correct. However, as no show cause notice was given, the Tribunal directed that there shall be no recovery of excess payment. It appears that, thereafter, the Department issued show cause notice on 5.4.1995, to which reply has been given. It appears that, again the respondent approached the Tribunal and the Tribunal, in absence of any decision after issuance of show cause notice, entertained the application and passed an order on merits. Respondent has not received any order passed by the petitioner.

3. Mr. Naik, learned advocate appearing for the Union of India, states that till this date, order has not been communicated. When the order is not communicated, there is no question of challenge of that order. Therefore, the order passed by the Tribunal is on the apprehension that some order may be passed against the respondent.

4. In paragraph 5 of the order of the Tribunal, the learned advocate representing the Union of India pointed out that the show cause notice has been given. It further transpires that the statement was made that the department had ordered recovery of the excess payment made on account of the incorrect fixation of pay. But the later sentence points out that the department is competent to rectify the mistake and also to recover the excess payment after giving an opportunity to the official, which has been done in this case. Mr. Naik appearing before us states that the order has not been communicated and, if that be so, there was no reason for the Tribunal to entertain the application, more particularly, when Tribunal itself issued a direction to give show cause notice and, thereafter, to take a decision and, therefore, after the decision is taken, it could be challenged and not before that. It may be that the department may not take any decision adverse to the respondent and if any adverse decision is rendered, it would be always open for the respondent to challenge the same. Mr. Naik further states that, till the decision is communicated, there shall be no recovery. In view of this, the order passed by the Tribunal is required to be quashed and set aside. Rule is made absolute accordingly with no order as to costs.

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